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UNITED STATES DISTRICT COURT

DISTRICT OF UTAH

JOHN C. HEATH, ATTORNEY AT LAW,
PC, d/b/a LEXINGTON LAW FIRM and
CREDITREPAIR.COM, INC.,

Plaintiffs,

v.

CATLIN SPECIALTY INSURANCE
COMPANY and INDIAN HARBOR
INSURANCE COMPANY,

Defendants.

PETITION FOR REMOVAL

Case No.: 2:21-cv-00301-JNP

Judge: Jill N. Parrish

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendants Catlin Specialty Insurance Company (“Catlin Specialty”) and Indian Harbor Insurance Company (“Indian Harbor” and, together with Catlin Specialty, “Defendants”) hereby submit this Petition for Removal and respectfully request that the above-captioned action be removed to the United States District Court for the District of

Utah from the Third Judicial District Court in and for Salt Lake County, State of Utah.¹ As set forth herein, removal has been timely and properly noticed, and the action is removable based on diversity of citizenship jurisdiction. *See* 28 U.S.C. § 1332.

REMOVAL IS TIMELY AND PROPERLY NOTICED

1. On January 27, 2021, plaintiffs John C. Heath, Attorney at Law, PC d/b/a Lexington Law Firm (“Lexington Law”) and Creditrepair.com, Inc. (“Creditrepair.com” and, together with Lexington Law, “Plaintiffs”) filed a complaint (the “Complaint”) against Defendants in the Third Judicial District Court in and for Salt Lake County, State of Utah. A copy of the Complaint is attached hereto as Exhibit A.

2. Pursuant to Local Rule 81-2(a)(2)(A), a current copy of the state court docket sheet is attached as Exhibit “B.”

3. Pursuant to Local Rule 81-2(a)(2)(B), the state court has not yet issued a scheduling order or notice of event due dates.

4. On April 16, 2021, Plaintiffs served the Complaint on the Utah Department of Insurance.

5. By letter postmarked April 22, 2021, the Utah Department of Insurance served the Complaint on Defendants.

6. On April 26, 2021, Defendants received the Complaint.

7. Removal is timely noticed because this Notice of Removal has been filed “within 30 days after the receipt by the defendants, through service or otherwise, of a copy of the initial

¹ The action is currently docketed at *John C. Heath, Attorney at Law, PC, d/b/a Lexington Law Firm and Creditrepair.com, Inc. v. Catlin Specialty Insurance Company and Indian Harbor Insurance Company*, Case No. 210900516 (Utah State Court – 3rd Judicial District Court).

pleading setting forth the claim for relief upon which such action or proceeding is based.” 28 U.S.C. § 1446(b).

8. In accordance with 28 U.S.C. § 1446(d), a copy of this Notice of Removal will be served promptly on Plaintiffs and filed with the Clerk of the Third Judicial District Court in and for Salt Lake County, State of Utah.

9. This action is properly removed to this Court because the District of Utah encompasses “the place where such action is pending.” *See* 28 U.S.C. § 1441(a); 28 U.S.C. § 112(c).

THE ACTION IS REMOVABLE
BASED ON DIVERSITY OF CITIZENSHIP JURISDICTION

10. This action is subject to removal under 28 U.S.C. §§ 1332(a) and 1441 because there is complete diversity of citizenship between the litigants and the amount in controversy exceeds \$75,000 exclusive of interest and costs. *See* 28 U.S.C. § 1446(c)(2)(A).

11. Plaintiff Lexington Law alleges that it is a Utah professional corporation with its principal place of business in Salt Lake City, Utah. (Compl. at ¶ 6.)

12. Plaintiff Creditrepair.com alleges that it is a Florida corporation with its principal place of business in Salt Lake City, Utah. (Compl. at ¶ 7.)

13. Defendant Catlin Specialty is a Delaware corporation with its principal place of business located in Stamford, Connecticut.

14. Defendant Indian Harbor is a Delaware corporation with its principal place of business located in Stamford, Connecticut.

15. Accordingly, there is complete diversity of citizenship between the parties.

16. In a coverage action, “the amount in controversy is measured by the injured third party’s bona fide claim against the insured, unless this exceeds the maximum limit of the policy, [i]n which event the amount in controversy is the maximum limit of the insurer’s liability under the policy.” *Farmers Ins. Co. v. McClain*, 603 F.2d 821, 823 (10th Cir. 1979) (quotation marks omitted); *accord Am. Nat’l Prop. & Cas. Co. v. Whisenant*, 2020 WL 5366810, at *4 (D.N.M. Sept. 8, 2020) (unpublished); *see also* Wright & Miller, 14AA Fed. Prac. & Proc. Juris. § 3710 (4th ed.) (“[In] those cases in which the question is the applicability of the policy to a particular occurrence ... the jurisdictional amount in controversy is measured by the value of the underlying claim against the insured.”).

17. In just one of the three underlying actions for which Plaintiffs seek coverage, the underlying plaintiffs seek compensatory damages in excess of \$75,000, as well as other damages. *See Ad Astra Recovery Servs., Inc. v. Heath et al.*, Case No. 18-cv-01145, First Amended Complaint, Dkt. No. 120, at 23 (D. Kan.).

18. In another underlying action for which Plaintiffs seek coverage, a jury returned a verdict of \$2.5 million against Lexington Law and its co-defendant. *See CBE Grp., Inc. v. Lexington Law Firm*, 993 F.3d 346, 349 (5th Cir. 2021). Though that verdict has since been vacated, *see id.*, on information and belief, Lexington Law faces similar potential liability in *Ad Astra*.

19. Plaintiffs also seek coverage for defense costs incurred by several national law firms, including Williams & Connolly LLP and Goodwin Proctor LLP. (*See, e.g.*, Compl. ¶¶ 62, 79.)

20. In *Ad Astra*, Williams & Connolly LLP junior associates bill at a rate of \$580 per hour and at least one attorney bills at a rate of \$1,100 per hour. *Ad Astra*, Case No. 18-cv-01145, Declaration of Edward J. Bennett, Dkt. No. 255-8, at ¶ 11.

21. In *Ad Astra*, Williams & Connolly LLP billed \$40,255 preparing just one discovery motion. *Id.*

22. In this action, Plaintiffs seek coverage under three policies of insurance each with an aggregate limit of \$5 million. (Compl. ¶¶ 34, 44, 49.)

23. Plaintiffs have also designated this action as “Discovery Tier 3,” which means Plaintiffs claim more than \$300,000 in damages. (Compl., Caption.)

24. Accordingly, the amount in controversy is in excess of \$75,000, and this Court has original jurisdiction over this action under 28 U.S.C. § 1332.

WHEREFORE, pursuant to 28 U.S.C. §§ 1441 and 1446, Defendants hereby remove this action to the United States District Court for the District of Utah from the Third Judicial District Court in and for Salt Lake County, State of Utah.

Defendants,

CATLIN SPECIALTY INSURANCE
COMPANY and INDIAN HARBOR
INSURANCE COMPANY

By:

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Their Attorneys

CERTIFICATE OF SERVICE

I hereby certify that on today's date, the foregoing was filed electronically and served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's CM/ECF system.

A copy of the foregoing was mailed on today's date, via certified mail, to the Plaintiffs at the following address:

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/s/ Paul M. Belnap
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